

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD)No.3748 of 2012

and

M.P.No.1 of 2012

Dhanalakshmi @ Jayanthi

... Petitioner

-vs-

1.Thirunavukkarasu
2.Dhakshinamoorthy
3.Pachiyammal

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order made in I.A.No.174 of 2012 in O.S.No.60 of 2009 passed by the learned Additional District Munsif, Kancheepuram, dated 30.03.2012.

For Petitioner : Mr.V.P.Rajendran

For Respondents : Mr.N.Ramanujam for R1
: No Appearance for RR 2 and 3

ORDER

The above Civil Revision Petition is filled by the plaintiff challenging the order passed by the learned Additional District Munsif, Kancheepuram in I.A.No.174 of 2012 in O.S.No.60 of 2009 in and by which, the learned Additional District Munsif has condoned the delay in receiving the documents under Order VIII Rule 1(A) of Section 151 on the Code of Civil Procedure.

2.The brief facts of the case are as follows:

The suit in O.S.No.60 of 2009 has been filed by the revision petitioner against her brothers and mother for partition and separate possession of her 5/16th share in the suit properties, which according to her was the ancestral suit properties of her father (late) Elumalai, which have been jointly enjoyed by herself and her brothers. In her complaint, she contended that she had come to know about the sham and nominal Partition that was executed between her brothers, in which they had obtained the signature of her father, who died in the year 2004. The revision petitioner would submit that she was married in the year 2000 and therefore, she is entitled for a share in the ancestral property.

3. The respondents/defendants 1 and 2 had filed a written statement, in which they would contend that the revision petitioner is very much aware about the partition even in the year 2000 itself and that after her marriage, she requested her father to pay a sum of Rs.60,000/- towards her share and they also stated that she relinquished her right to the immovable property. It is only after paying the said sum of Rs.60,000/- her father and the brothers had executed the Partition Deed. The defendants/respondents also pointed out the fact that the plaintiff/revision petitioner has waited for nine years to file the suit and the same would itself prove that

she had relinquished her right in the properties. They would also submit that the second respondent herein had sold an extent of 20 cents to the revision petitioner's husband's uncle and the revision petitioner had signed in the above Sale Agreement and received a sum of Rs. 30,000/- from out of the sale. The respondents would also contend that from the date of the Partition Deed, they have been in possession and enjoyment of their respective shares.

4. After issues were framed, and when the matter was posted for trial, the respondents had come forward with an application in I.A.No.174 of 2012 to receive 12 documents and seeking the leave of the Court to file those documents, since those documents have not been filed along with the written statement. The respondents have contented that the said documents were untraceable by them and as a result, there was a delay in producing the documents and the delay is neither wilful nor wanton.

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5.The revision petitioner had filed a counter in IA.No.174/2012 in which, her had raised two objections:

a) that the document namely the letter dated 21.11.2000, said to have been executed by the revision petitioner is forged and

concocted document and it is for this reason, there is no reference to this document in the written statement; and

b) that this document cannot be received as an evidence, as it is a Release Deed, which has to be compulsory registered and therefore the document is hit by the provision of Section 35 of the Indian Stamp Act and section 49 of the Registration Act.

6. The learned Additional District Munsif, Kancheepuram by his order dated 30.03.2012 allowed the application on condition that the defendants/respondents herein pay S.D.P on document No.8 as receipt. It is this order that is the subject matter of challenge in the above revision.

7. Heard, Mr.Rajendran, learned counsel appearing for the petitioner.

8. The learned counsel for the petitioner would contend that the document, though titled a receipt, is in fact, a Release Deed, which has to be compulsorily registered under Section 49 of the Registration Act, and cannot be received as an evidence even for collateral purpose, since the document is used for the primary purpose for proving that the revision petitioner had relinquished all

her interest in the property, he would contend that the learned District Munsif, by permitting the defendants to pay the Stamp Duty Payable has in fact legalised a document, which cannot be received in evidence, which is aggrieved without prejudice to the interest of the revision petitioner and the order deserves to be set aside.

9. The learned counsel for the petitioner would rely on judgement of (2011) 5 MLJ 15, Ammamuthu Ammal (Died) and others.. Appellants versus Devaraj and Others .. respondents. Wherein paragraph No.24 and 25 reads thus:

"24.....The payment of stamp duty and penalty under Section 35 of the Indian Stamp Act would not partake the place of registration. If a document is inherently bad for registration that cannot be cured by paying deficit stamp duty and penalty. But the appellate Court misunderstood those facts and held otherwise. Once again the appellate Court also ushered in the concept 'collateral purpose' which cannot be done in the facts and circumstances for the reasons already averted to supra by me.

25. It is therefore crystal clear that the Courts below misdirected themselves and applied the wrong proposition of law and held as though Exhibit B13 is a valid piece of document and decided the lis, Warranting interference in the second appeal."

10. Per contra, Mr.N.Ramanujam, learned counsel appearing for the respondent would contend that the application is only at the stage of receiving documents and all defences can be raised at the time of marking the document and the rights of the revision

petitioner has not been prejudiced by receiving the said document.

11. The learned counsel for the respondent also relied on the judgement in CRP(PD).Nos.2023 and 2024 of 2018 dated 16.07.2018 and paragraph No.6 of the said judgement is reproduced here under :

"6.....The learned counsel for the petitioner would submit that during the chief examination, the plaintiff ought to have produce all the document along the proof affidavit. The plaintiff filed it without leave of the Court. If the party seeks a relief from the Court, the Court is satisfied with the reasons in order to production of document, the Court shall consider and permit the party to produce the documents. It is the discretionary power of the Court, while exercising the discretionary power of the Court, this Court has to see while trial Court Exercising the discretionary power as to whether any arbitrariness in the order passed by the trial Court. Where as this Court does not find there is no illegality or perversity in the orders passed by the trial Court and finds no merits in this revision petition."

12. Heard the learned counsels on either sides and perused the documents.

13. The reading of the document styled as receipt which has been filed as document No.8 in the list of documents provided in the petition I.A.No.174 of 2012, shows that the Revision Petitioner had

<http://www.judis.nic.in> received the amount as Rs.60,000/-. The document clearly

mentions that the executor namely; the revision petitioner herein, is releasing her interest in the joint family properties, which admittedly is a Release Deed which is to be compulsorily registered under Section 17 (1) of the Registration Act. However, the stage at which the suit is now lying is at the stage of receiving the documents under the provisions of Order VII Rule 1(A) of Civil Procedure Code. The defence which the revision petitioner has now raised can be raised by her at the time when the document is sought to be marked as evidence. This court, in the judgement referred to is (2011) 5 MLJ 15 has clearly laid down that when a document is to be compulsorily registrable, mere payment of stamp duty and penalty cannot partake the place of registration and the lack of registration cannot be cured by payment of Stamp Duty and Penalty.

14. However taking into account the fact that the document is now only sought to be taken on file as a document, this Court, finds no infirmity for the order passed by the learned District Munsif, Kancheepuram. It is open to the plaintiffs to question the marking of the document, with reference to proof and relevancy as well as its evidentiary value at the time when the document is sought to be marked.

15. In the result, this Civil Revision petition is disposed of in the above lines. There shall be no order as to costs and connected miscellaneous petition is closed.

30.10.2018

NOTE: It is rather unfortunate that the learned District Munsif, Kancheepuram has used abbreviations and not expanded these abbreviations. The use of abbreviations in a judgement is deprecated as a judgement/order is a solemn pronouncement by a court of law. This Court cautions the learned District Munsif from using abbreviations in his judgement.

Index : Yes/No
Speaking/non-speaking order

jrs/tta

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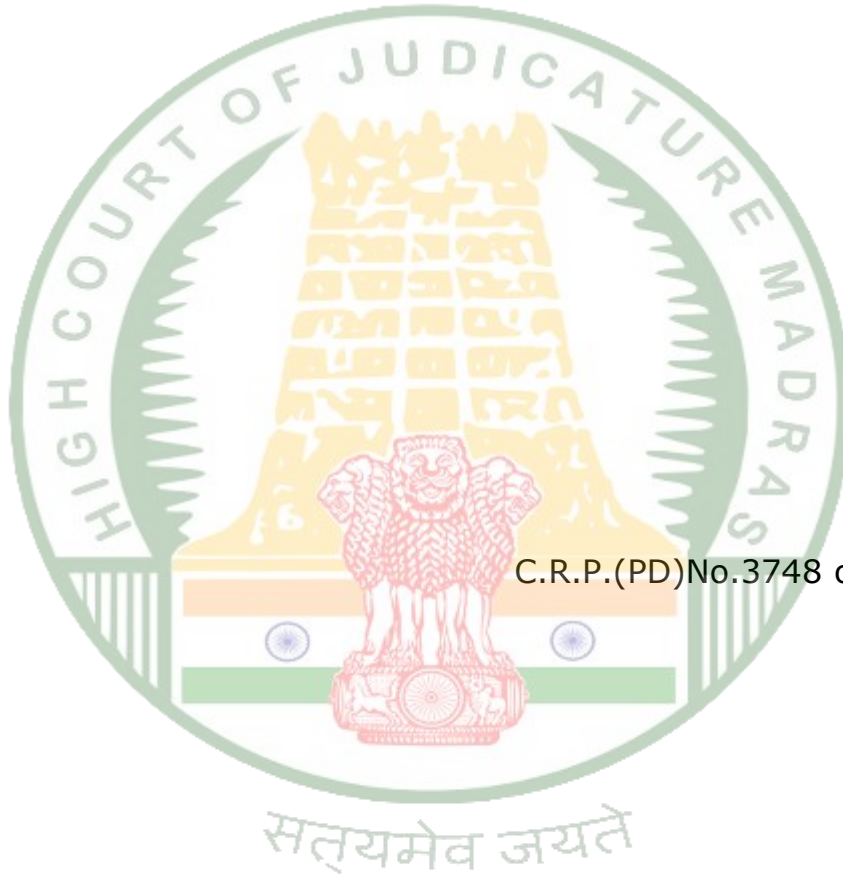
To

The Learned Additional District Munsif,
Kancheepuram.

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P.T.ASHA, J.

jrs/tta



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